

In the Matter of Merchant Mariner's Document No. Z865520 and all other Licenses, Certificates and Documents

Issued to: HORACE HUNT, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

966

HORACE HUNT, JR.

This appeal has been taken in accordance with Title 46 United States Code 239 a-b (Public Law 500, 83d Congress, 68 Stat. 484) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 5 December 1956, an Examiner of the United States Coast Guard at Baltimore, Maryland, revoked the seamen documents of Appellant upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification alleges that on or about 19 November 1956, Appellant was convicted by the Criminal Court of Baltimore, Maryland, a court of record, for violation of the narcotic drug laws of the State of Maryland.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the two possible results of the hearing - revocation of his documents or dismissal of the charge and specification. Appellant was represented by counsel of his own choice. He entered a plea of "guilty" to the charge and specification.

The Investigating Officer and Appellant's counsel made their opening statements. The Investigating Officer then introduced in evidence a certified copy of the record of Appellant's conviction, for unlawful possession and control of marijuana, as alleged in the specification.

At the conclusion of the hearing, the Examiner announced his decision and concluded that the charge and specification had been proved by plea. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-865520 and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 19 November 1956, Appellant was convicted on his plea of "guilty" before the Criminal Court of Baltimore, Maryland, a court of record, to the charge of unlawful possession and control of marijuana on 2 November 1956. Appellant was sentenced to 18 months

in the Maryland House of Correction. Execution of the sentence was suspended indefinitely dependent upon Appellant's good behavior.

Appellant has no prior record.

#### BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant states that the purpose of Public Law 500, 83d Congress, is to prevent convicted users and smugglers of narcotic drugs from working on vessels of the U. S. Merchant Marine Service. Appellant is not in this category of offenders as is indicated by his prior unblemished record. Since the Examiner had alternative choices concerning the order to be imposed, it is submitted that the order or revocation should be modified to a probationary suspension.

APPEARANCE ON APPEAL: Sheldon Tabak, Esquire, of New York City,  
of Counsel.

#### OPINION

Title 46 U.S.C. 239a-b (Public Law 500) provides for the revocation of a seaman's documents after he has been found guilty of having been convicted, in a court of record, for a violation of the narcotic drug laws. There is no provision for an order less than revocation if the charge is proved. This mandatory requirement of the statute is emphasized by 46 CFR 137.04-10 which states that the Examiner must enter an order of revocation when the case is proved. The provision for lesser orders, as provided for in 46 CFR 137.09-75 applies only to proceedings under R.S. 4450, as amended (46 U.S.C. 239). This distinction is pointed out in 46 CFR 137.04-5 which states that the proceedings under Public Law 500 shall be in accordance with the other regulations in 46 CFR Part 137 except where the latter regulations are inconsistent with Public Law 500 or 46 CFR Subpart 137.04. Title 46 CFR 137.09-75 is clearly inconsistent with the mandatory requirement of revocation contained in Public Law 500 and 46 CFR 137.04-10.

The application of Public Law 500 is not limited by its wording to the purpose, urged on appeal, of preventing only convicted users and smugglers of narcotic drugs from serving on our merchant vessels. Consequently, the order of revocation must be sustained despite Appellant's prior clear record.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 5  
December 1956, is AFFIRMED.

J. A. Hirshfield  
Rear Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 22nd day of May, 1957.